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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:
USA COMMERCIAL MORTGAGE COMPANY,

Debtor.

In re:
USA CAPITAL REALTY ADVISORS, LLC,

Debtor.

In re:
USA CAPITAL DIVERSIFIED TRUST DEED FUND,
LLC,

Debtor.

In re:
USA CAPITAL FIRST TRUST DEED FUND, LLC,

Debtor.

In re:
USA SECURITIES, LLC,

Debtor.

Affects:
☐ All Debtors
☒ USA Commercial Mortgage Company
☐ USA Capital Realty Advisors, LLC
☐ USA Capital Diversified Trust Deed Fund, LLC
☐ USA Capital First Trust Deed Fund, LLC
☐ USA Securities, LLC

Case Nos.:
BK-S-06-10725-LBR
BK-S-06-10726-LBR
BK-S-06-10727-LBR
BK-S-06-10728-LBR
BK-S-06-10729-LBR

JOINTLY ADMINISTERED
Chapter 11 Cases

Judge Linda B. Riegler

**NOTICE OF APPLICATION TO
COMPROMISE AND SETTLE
CONTROVERSIES IN ADV. NO. 08-
01125**

Hearing Date: October 5, 2009
Hearing Time: 9:30 a.m.

NOTICE IS HEREBY GIVEN that an Application to Compromise and Settle Controversies in Adv. No. 08-01125 (the "Motion") was filed on September 4, 2009 by the USACM Liquidating Trust [Dkt. No. 7457]. The Motion seeks entry of an order approving the proposed settlement between the USACM Liquidating Trust (the "USACM Trust") and Eagle Ranch LLC ("Eagle Ranch").

Following extensive arms-length negotiations, the USACM Trust and Eagle Ranch (collectively, the “Parties”) reached a tentative agreement to resolve the Pending Litigation subject to execution of a mutually-agreeable settlement agreement. The material terms of the Proposed Settlement Agreement are summarized as follows¹:

- The Mediating Defendants unconditionally agree to pay the sum of two million five hundred fifty thousand dollars (\$2,550,000) to Carmel and the USACM Liquidating Trust (the “Plaintiffs”) by wire transfer, certified check, or other method as may be agreed upon by the Mediating Parties (the “Settlement Payment”) on or before the fifth business day after approval of the Proposed Settlement Agreement by this Court;
- Upon approval of the Proposed Settlement Agreement by the court pursuant to Rule 9019, Wells Fargo, in its capacity as trustee of the HCET, has authority to release and pay any amounts to effectuate the Proposed Settlement Agreement as agreed to by the HCET beneficiaries. The Proposed Settlement Agreement supercedes any and all orders or agreements concerning the HCET. Upon timely payment of the settlement payment, Wells Fargo or any successor trustee shall be authorized to administer the trust in accordance with the terms therein without further order of the Court;
- Eagle Ranch LLC unconditionally agrees to and shall assign to the Plaintiffs all claims and interest in any and all proceeds from the claims belonging to Eagle Ranch LLC against the City of Victorville currently the subject of pending litigation in San Bernardino County, California. Documents to effectuate the assignment will be drafted within ten business days of the execution of the Settlement Agreement. The assignment will be executed on or before the fifth business day after the approval of the Settlement Agreement by the Court;
- Palomino Partners, Ltd. unconditionally agrees to purchase from Plaintiffs, upon Plaintiffs’ demand, the claims, interest, and proceeds assigned to the Plaintiffs as described in the preceding paragraph for the sum of five hundred thousand dollars (\$500,000) in cash (the “Eagle Ranch Put”). Plaintiffs intend to exercise the Eagle Ranch Put on or before the fifth business day after assignment, but no later than thirty (30) days after the assignment. Upon Plaintiffs’ exercise of the Eagle Ranch Put, the Eagle Ranch Put transaction will be executed and effectuated. Documents necessary to effectuate consummation of the Eagle Ranch Put will be drafted within 10 days of the execution of the Settlement Agreement;

¹ The following is solely a summary of the terms of the Settlement Agreement, and in no way is intended as an amendment, modification, or supplementation of the Settlement Agreement terms. The terms of the written settlement agreement between the Parties shall prevail in the event of any conflict with this summary. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Settlement Agreement.

- 1 • Upon receipt of the Settlement Payment, the Plaintiffs hereby release and discharge

2 all Defendant Released Parties (which per the agreement explicitly *excludes* Thomas

3 Hantges) and all of their present and former principals, members, agents, employees,

4 staff, predecessors, and successors and the respective attorneys, consultants, adjustors

5 and insurers in the capacities as such, from any and all claims, demands, damages,

6 liabilities, actions, and causes of action or suits at law or in equity of whatever kind,

7 whether state or federal, arising pre-petition or post-petition, known or unknown,

8 including but not limited to those brought in the Blanchard Adversary Proceeding, the

9 Eagle Ranch Adversary Proceeding, and the Hantges Adversary Proceeding. Thomas

10 Hantges will not receive this general release, but claims asserted against him and all

11 of the Mediating Defendants specifically made in the Hantges Adversary Proceeding,

12 the Blanchard Adversary Proceeding and the Eagle Ranch Adversary Proceeding will

13 be dismissed with prejudice, with Plaintiffs to bear only their own attorneys' fees and

14 costs;
- 15 • Plaintiffs also hereby release and discharge any and all claims against certain entities

16 not parties to the Hantges Adversary Proceeding, the Blanchard Adversary

17 Proceeding or the Eagle Ranch Adversary Proceeding, including: HBM Holdings

18 LLC, Reno South Meadows LLC, South Meadows Apartments LLC, MET Partners

19 LLC, Tanamera Holding Company, Inc., Eagle Ranch Residential LLC, Premier

20 Trust of Nevada, Inc., the members of Eagle Ranch, LLC and of South Meadows

21 Apartments, LLC, and Nevada Skin and Cancer, Lucius Blanchard, M.D. Chartered.
- 22 • The *only* release as to Thomas Hantges, individually, is as to the claims arising out of

23 or relating to those claims asserted in the Hantges Adversary Proceeding, the

24 Blanchard Adversary Proceeding and the Eagle Ranch Adversary Proceeding. No

25 other claims whatsoever by either the USACM Liquidating Trust or the Trustee of the

26 Chapter 11 Thomas Hantges Bankruptcy Estate are being released or dismissed;
- 27 • With the exception of Thomas Hantges, individually, the Blanchard Defendants in all

28 the capacities in which they appear in the Hantges Adversary Proceeding, the

29 Blanchard Adversary Proceeding and the Eagle Ranch Adversary Proceeding, release

30 and discharge both Michael W. Carmel, in his capacity as Chapter 11 Trustee for the

31 Estate of Thomas A. Hantges and Geoffrey Berman, trustee of the USACM

32 Liquidating Trust and all of their present and former principals, members, agents

33 employees, staff, predecessors and successors, and their respective attorneys,

34 consultants, adjustors and insurers in their capacities as such, from any and all claims,

35 demands, damage, liabilities, actions and causes of action, or suits at law or in equity

36 of whatever kind, whether state or federal, arising pre-petition or post petition, known

37 or unknown.
- 38 • Within five business days of receipt of the Settlement Payment and either (a) receipt

39 of the Eagle Ranch Put or (b) expiration of the exercise of the Eagle Ranch Put (30

40 days after assignment), Plaintiffs will file dismissal papers with the Court effectuating

41 dismissal with prejudice as set forth above. Upon filing of the dismissal, Eagle Ranch

42 shall withdraw the writ of mandamus filed before the Ninth Circuit in the Eagle

43 Ranch Adversary Proceeding;

- The Mediating Parties agree to support the Proposed Settlement Agreement in all material ways, including in its application and enforcement against any and all persons or entities seeking to avoid or limit the applicability or scope of the Proposed Settlement Agreement in any manner; and

NOTICE IS FURTHER GIVEN that if you do not want the Court to grant the relief sought in the Motion, or if you want the Court to consider your views on the Motion, then you must file an opposition with the Court, and serve a copy on the person making the Motion ***no later than 15 days*** after the date of this Notice. If the hearing date has been set on less than 15 days' notice, then the opposition must be filed and served ***no later than 5 business days*** before the hearing. The opposition must state your position, set forth all relevant facts and legal authority, and be supported by affidavits or declarations that conform to Local Rule 9014(c).

If you object to the relief requested in the Motion, you ***must*** file a **WRITTEN** response to the Motion with the Court. You ***must*** also serve your written response on the person who sent you this notice.

If you do not file a written response with the Court, or if you do not serve your written response on the person who sent you this notice, then:

- The Court may *refuse to allow you to speak* at the scheduled hearing; and
- The Court may *rule against you* without formally calling the matter at the hearing.

NOTICE IS FURTHER GIVEN that the hearing on the said Motion will be held before the Honorable Linda B. Riegler, United States Bankruptcy Judge, in the Foley Federal Building, 300 Las Vegas Boulevard South, Third Floor, Bankruptcy Courtroom No. 1, Las Vegas, Nevada 89101 on **Monday, October 5, 2009 at 9:30 a.m.**

1
2 Dated: September 4, 2009

3 **DIAMOND MCCARTHY LLP**

4 By: /s/ Allan B. Diamond
5 Allan B. Diamond, TX 05801800 (pro hac vice)
6 Eric D. Madden, TX 24013079 (pro hac vice)
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10 *Special Litigation Counsel for*
11 *USACM Liquidating Trust*

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Counsel for USACM Liquidating Trust

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of September 2009, I caused to be served a true and correct copy of the foregoing **NOTICE OF APPLICATION TO COMPROMISE AND SETTLE CONTROVERSIES** by electronic transmission to the Post-Confirmation Service List, dated March 31, 2009, and to counsel for the Mediating Defendants as follows: (1) Barney C. Ales, Goold Patterson Ales & Day, 4496 South Pecos Rd., Las Vegas Nevada 89121, bales@gooldpatterson.com, counsel of record for Lucius Blanchard; (2) Dana Dwiggins, Solomon Dwiggins & Freer, 9060 West Cheyenne Ave., Las Vegas NV 89129, ddwiggins@sdfnvlaw.com, counsel of record for the Blanchard Children's Education Trust; (3) Timothy S. Cory, Timothy S. Cory & Associates, 8831 West Sahara Ave., Las Vegas NV 89117, tim.cory@corylaw.us, counsel of record for Thomas A. Hantges; (4) Carol Harris, Harrison, Kemp, Jones, & Coulthard LLP, Wells Fargo Tower, 3800 Howard Hughes Parkway, 17th Floor, Las Vegas NV 89169, c.harris@kempjones.com, counsel of record for Victoria Loob; and (5) Brian Holthus, Jolley, Urga, Wirth Woodbury, & Standish, Wells Fargo Tower, 3800 Howard Hughes Parkway, 16th Floor, Las Vegas NV 89169, beh@juww.com, counsel of record for Wells Fargo N.A. and the Hantges Children's Education Trust.

/s/ Catherine Burrow
Catherine Burrow, Legal Assistant